



State of Wisconsin
2013 - 2014 LEGISLATURE

SOON (in 8/7)



LRB-2261/P

RCT:jld:jf

rmf
fsc

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

ONote

- 1 AN ACT *to amend* 283.83 (1) (intro.) and 283.83 (1) (b); and *to create* 283.83 (1m)
2 of the statutes; **relating to:** areawide water quality management plans and *planning for Dane County*
3 revisions to those plans.

Analysis by the Legislative Reference Bureau

Analysis insert This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 4 ^x
SECTION 1. 283.83 (1) (intro.) of the statutes is amended to read:
5 283.83 (1) (intro.) The department shall establish a continuing water pollution
6 control quality management planning process which is consistent with applicable
7 state requirements. The continuing planning process shall result in plans for all
8 waters of the state, which plans shall include:
9 ^x
SECTION 2. 283.83 (1) (b) of the statutes is amended to read:

1 283.83 (1) (b) The incorporation of all elements of any applicable areawide
2 waste treatment management plans, basin plans and statewide land use plans;

****NOTE: These changes are intended to provide terminology that is consistent with DNR's rules and federal law. Please see the drafter's note for a discussion of the relevant laws and rules.

3 **SECTION 3.** 283.83^x (1m) of the statutes is created to read:

4 283.83 (1m) (a) Beginning on the effective date of this subsection [LRB
5 inserts date], the governor may not designate an organization under 33 USC 1288
6 (a) (2) to develop an areawide water quality management plan for ^{the consisting of Dane County} any area ~~that was~~
7 not designated under 33 USC 1288 (a) (2) as having substantial water quality control
8 problems before that date.

9 (b) The department shall prepare ^{of the} an areawide water quality management plan
10 for ^{of the consisting of Dane County} each area of the state for which the governor has not designated an organization
11 under 33 USC 1288 (a) (2) before the effective date of this paragraph [LRB inserts
12 date].

13 (c) 1. The department shall adopt or reject a proposed revision to ^{of the} an areawide
14 water quality management plan prepared by the department under par. (b) no later
15 than the 90th day after the day on which it receives the request to make the proposed
16 revision. ^{except as provided under subd. 2}

17 2. If the department does not adopt or reject a proposed revision to ^{of the} an areawide
18 water quality management plan by the ^{90th day after the day on which it receives the request} deadline under subd. 1, the revision is
19 adopted. ^{Insert 2-19}

20 (d) The department may contract with a regional planning commission or other
21 agency to provide advisory services relating to the review of proposed revisions to
22 ^{the} areawide water quality management plans ^{of} to which par. (c) 1. applies, but may not

- 1 delegate its authority to adopt or reject proposed revisions. The deadline under par.
2 (c) 1. is not affected by a contract entered into under this paragraph.

****NOTE: The statutes and the rules do not indicate who may propose to DNR a revision of an areawide water quality management plan developed by DNR. Please see the Drafter's Note for more information.

Please note that, as drafted, the deadline in par. (c) 1. for DNR to act applies to proposed revisions that relate to any subject included in an areawide water quality management plan. See the Drafter's note for a discussion of the subjects covered by a plan.

Also, par. (c) 1. applies only to areas for which par. (b) requires DNR to prepare areawide plans (nondesignated areas). If the intent is to impose a deadline also for designated areas, we will need to discuss how that would work.

3

(END)

DNote

1

Analysis insert

Federal law requires each state to have a continuing water quality planning process that is approved by the federal Environmental Protection Agency. The law requires the plans resulting from this process to include, among a number of other elements, areawide waste treatment management plans, which contain plans for the construction of sewage treatment plants and sewage collection systems.

The federal law required governors to initially designate any area with substantial water quality problems and to designate a local organization that includes local elected officials or their designees to conduct the areawide waste treatment management planning for each designated area. Governors may designate additional areas and planning agencies after the initial mandatory designation. Federal law requires a state to act as the waste treatment management planning agency for any area of the state not designated by the governor.

Current state law requires the Department of Natural Resources (DNR) to establish a continuing water quality management planning process that results in plans for all areas of the state. The plans must include the elements required by federal law. Under DNR's rules, the areawide waste treatment management portion of a water quality management plan must identify sewer service areas for a 20-year planning period.

Under the rules, for an area designated by the governor under federal law, DNR reviews and approves the water quality management plan developed by the designated agency. DNR adopts the plan for each area of the state not designated by the governor, but the rules specify that preparation of the plan for such an area will be carried out by a local planning agency under contract with DNR, if possible. Water quality management plans are updated every five years. The rules authorize DNR to revise as necessary areawide water quality management plans for areas not designated by the governor.

This bill prohibits the governor from designating a local organization to develop the areawide water quality management plan for Dane County and requires DNR to prepare the plan for Dane County. The bill requires DNR to adopt or reject a proposed revision to the areawide water quality management plan for Dane County within 90 days after it receives the request for the revision. Under the bill, if DNR does not adopt or reject a proposed revision to an areawide water quality management plan for Dane County within 90 days after it receives the request, the proposed revision is automatically adopted on the 120th day, unless before that day DNR petitions the circuit court for an order extending the time for DNR to act on the revision. The court may grant an extension for a period it determines to be reasonable.

The bill authorizes DNR to contract with a regional planning commission or other agency to provide advisory services relating to the review of proposed revisions to the areawide water quality management plan for Dane County, but specifies that DNR may not delegate its authority to adopt or reject revisions.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

1 **Insert 2-19**

2 on the 120th day after the day on which the department receives the request,
3 unless before that day the department petitions the circuit court for an order
4 extending the time to act on the proposed revision. The court may issue an order
5 extending the time for the department to act on the proposed revision by an amount
6 it determines is reasonable

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2261/P2dn

RCT:j:....

Sac

- date -

Mark Florian:

This ia a redraft of the proposal concerning areawide water quality management planning.

This draft is based on the understanding that the Capitol Area Regional Planning Commission is not a designated agency for the purpose of waste treatment management planning under the Clean Water Act. I have not found any official source to verify this understanding.

You may ^{or wish} ~~with~~ to consider whether to have this proposal specify who may request a revision to the areawide water quality management plan for Dane_{County}.

Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2261/P2dn
RCT:sac:rs

August 13, 2013

Mark Florian:

This is a redraft of the proposal concerning areawide water quality management planning.

This draft is based on the understanding that the Capitol Area Regional Planning Commission is not a designated agency for the purpose of waste treatment management planning under the Clean Water Act. I have not found any official source to verify this understanding.

You may wish to consider whether to have this proposal specify who may request a revision to the areawide water quality management plan for Dane County.

Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

Tradewell, Becky

From: Florian, Mark
Sent: Monday, August 26, 2013 1:51 PM
To: Tradewell, Becky
Subject: FW: Draft review: LRB -2261/P2 Topic: Areawide water quality plans and revisions to those plans

Good afternoon Becky,

I hope that this message finds you well. Please see the note below from Brad Boycks of the Wisconsin Builder's Association including their one recommended change for the updated bill draft. If you see any issues with the specific change please let us know.

Thanks and all the best,

Mark

Mark Florian
Office of Representative John Jagler
37th Assembly District
(608) 266-9650

From: Brad Boycks [<mailto:bboycks@wisbuild.org>]
Sent: Monday, August 26, 2013 1:46 PM
To: Florian, Mark
Subject: RE: Draft review: LRB -2261/P2 Topic: Areawide water quality plans and revisions to those plans

Thanks, Mark.

I checked on this and folks had one change. Could you run this by the drafter?

Brad

At line 21 after the work "revisions" strike the period and add "and may not contract with Dane County or any of its subunits."



Brad Boycks
Vice-President, Advocacy
Wisconsin Builders Association®
bboycks@wisbuild.org
(608) 242-5151 ext.16
Visit our web site: www.wisbuild.org

Tradewell, Becky

From: Florian, Mark
Sent: Wednesday, August 28, 2013 10:20 AM
To: Tradewell, Becky
Subject: RE: Draft review: LRB -2261/P2 Topic: Areawide water quality plans and revisions to those plans

Hello Becky,

That interpretation is consistent with what we're looking for.

Thanks and all the best,

Mark

Mark Florian
Office of Representative John Jagler
37th Assembly District
(608) 266-9650

From: Tradewell, Becky
Sent: Tuesday, August 27, 2013 8:57 AM
To: Florian, Mark
Subject: RE: Draft review: LRB -2261/P2 Topic: Areawide water quality plans and revisions to those plans

Mark,

I would interpret the draft with this change to allow DNR to contract with the Capital Area Regional Planning Commission if it wished to do so. Is that consistent with what is wanted?

Thanks,
Becky

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Sent: Monday, August 26, 2013 1:51 PM
To: Tradewell, Becky
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Visit our web site: www.wisbuild.org

Follow WBA and network with members at these social media sites:



If you no longer wish to receive any email communications from the Wisconsin Builders Association®, please [click here](#) and include in the body of your message your name, company name and email address. Subscription and specific opt-out options are available on the member's side of www.wisbuild.org Member Information> Update My Information



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2261/P2 1
RCT:jld&sac:fs
vmr

Fri (8/30)
if possible

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

gen cat

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2 of the statutes; **relating to:** areawide water quality management planning for
3 Dane County.

Analysis by the Legislative Reference Bureau

Federal law requires each state to have a continuing water quality planning process that is approved by the federal Environmental Protection Agency. The law requires the plans resulting from this process to include, among a number of other elements, areawide waste treatment management plans, which contain plans for the construction of sewage treatment plants and sewage collection systems.

The federal law required governors to initially designate any area with substantial water quality problems and to designate a local organization that includes local elected officials or their designees to conduct the areawide waste treatment management planning for each designated area. Governors may designate additional areas and planning agencies after the initial mandatory designation. Federal law requires a state to act as the waste treatment management planning agency for any area of the state not designated by the governor.

Current state law requires the Department of Natural Resources (DNR) to establish a continuing water quality management planning process that results in plans for all areas of the state. The plans must include the elements required by federal law. Under DNR's rules, the areawide waste treatment management portion of a water quality management plan must identify sewer service areas for a 20-year planning period.

Under the rules, for an area designated by the governor under federal law, DNR reviews and approves the water quality management plan developed by the

designated agency. DNR adopts the plan for each area of the state not designated by the governor, but the rules specify that preparation of the plan for such an area will be carried out by a local planning agency under contract with DNR, if possible. Water quality management plans are updated every five years. The rules authorize DNR to revise as necessary areawide water quality management plans for areas not designated by the governor.

This bill prohibits the governor from designating a local organization to develop the areawide water quality management plan for Dane County and requires DNR to prepare the plan for Dane County. The bill requires DNR to adopt or reject a proposed revision to the areawide water quality management plan for Dane County within 90 days after it receives the request for the revision. Under the bill, if DNR does not adopt or reject a proposed revision to an areawide water quality management plan for Dane County within 90 days after it receives the request, the proposed revision is automatically adopted on the 120th day, unless before that day DNR petitions the circuit court for an order extending the time for DNR to act on the revision. The court may grant an extension for a period it determines to be reasonable.

*analysis
insert* The bill authorizes DNR to contract with a regional planning commission or other ~~agency~~ to provide advisory services relating to the review of proposed revisions to the areawide water quality management plan for Dane County, but specifies that DNR may not delegate its authority to adopt or reject revisions.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 283.83 (1) (intro.) of the statutes is amended to read:

2 283.83 (1) (intro.) The department shall establish a continuing water pollution
3 ~~control~~ quality management planning process which is consistent with applicable
4 state requirements. The continuing planning process shall result in plans for all
5 waters of the state, which plans shall include:

6 **SECTION 2.** 283.83 (1) (b) of the statutes is amended to read:

7 283.83 (1) (b) The incorporation of all elements of any applicable areawide
8 waste treatment management plans, basin plans and statewide land use plans;

9 **SECTION 3.** 283.83 (1m) of the statutes is created to read:

1 283.83 (1m) (a) Beginning on the effective date of this subsection [LRB
2 inserts date], the governor may not designate an organization under 33 USC 1288
3 (a) (2) to develop an areawide water quality management plan for the area consisting
4 of Dane County.

5 (b) The department shall prepare the areawide water quality management
6 plan for the area consisting of Dane County.

7 (c) 1. The department shall adopt or reject a proposed revision to the areawide
8 water quality management plan prepared by the department under par. (b) no later
9 than the 90th day after the day on which it receives the request to make the proposed
10 revision, except as provided under subd. 2.

11 2. If the department does not adopt or reject a proposed revision to the areawide
12 water quality management plan by the 90th day after the day on which it receives
13 the request, the revision is adopted on the 120th day after the day on which the
14 department receives the request, unless before that day the department petitions the
15 circuit court for an order extending the time to act on the proposed revision. The
16 court may issue an order extending the time for the department to act on the
17 proposed revision by an amount it determines is reasonable.

18 (d) The department may contract with a regional planning commission or other
19 agency ^{Insert 2-19} to provide advisory services relating to the review of proposed revisions to the
20 areawide water quality management plan to which par. (c) 1. applies, but ^{the department} may not
21 delegate its authority to adopt or reject proposed revisions. The deadline under par.
22 (c) 1. is not affected by a contract entered into under this paragraph.

23 (END)

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2261/lins
RCT:.....

- 1 **Analysis insert**
entity, except Dane County or any of its subunits,
- 2 **Insert 2-19**
- 3 entity, except Dane County or any of its subunits,

Tradewell, Becky

From: Florian, Mark
Sent: Thursday, October 10, 2013 2:56 PM
To: Tradewell, Becky
Subject: LRB 2261 - Requested Revisions
Attachments: Memo - Preliminary Draft of Areawide Water Quality Mgmt Legislation.docx

Good afternoon Becky,

I hope that this message finds you well. Attached you will find a memo outlining changes that we would like to see in the a revised draft for LRB-2261. Please feel free to contact me with any issues, I would be happy to set up another meeting if you would like to go over this in person. We really appreciate your assistance!

Thanks and all the best,

Mark

Mark Florian
Office of Representative John Jagler
37th Assembly District
(608) 266-9650

MEMORANDUM

TO: Becky Tradewell
Managing Attorney
Legislative Reference Bureau

FROM: Office of Rep. John Jagler

DATE: October 10, 2013

RE: LRB-2261/2
Preliminary Draft of Areawide Water Quality Mgmt. Legislation
Wis. Stat. § 283

Thank you for your assistance in this matter. After consultation with the Wisconsin Department of Natural Resources (the "department"), we have the following requested revisions:

✓ 1. Terminology. The department does not use the term "waste treatment management plans." The department has approved "areawide water quality management plans". Under Wis. Adm. Code sec. NR 121.03(1), it appears the terms are intended to be interchangeable. The department asked us to point that out for drafting purposes.

✓ 2. Designated Agency / Department Authority. The proposed 283.83(1m)(a) and (b) may be removed. Please draft a provision that confirms that the department is the final authority to approve or reject revisions to the Dane County Water Quality Management Plan. This provision is intended to, in part, codify the holding in Village of Mazomanie v. Wisconsin Department of Natural Resources, Case No. 09-CV-6397 (Dane County Circuit Ct. 2010) (holding that the department's refusal to review CARPC's denial of an amendment to the areawide water quality management plan was an erroneous interpretation of Wis. Admin. Code ch. NR 121).

✓ 3. Water Quality Standards. The department requested that language be added requiring that the department's decision to approve or reject a revision to the areawide water quality management plan shall be based on whether the request complies with the water quality standards established by the department pursuant to Wis. Stat. sec. 281.15.

✓ 4. Conditional Approval. The department requested that language be added that the department may place conditions on its approval of a request to revise the areawide water quality management plan.

5. Ninety Day Time Period.

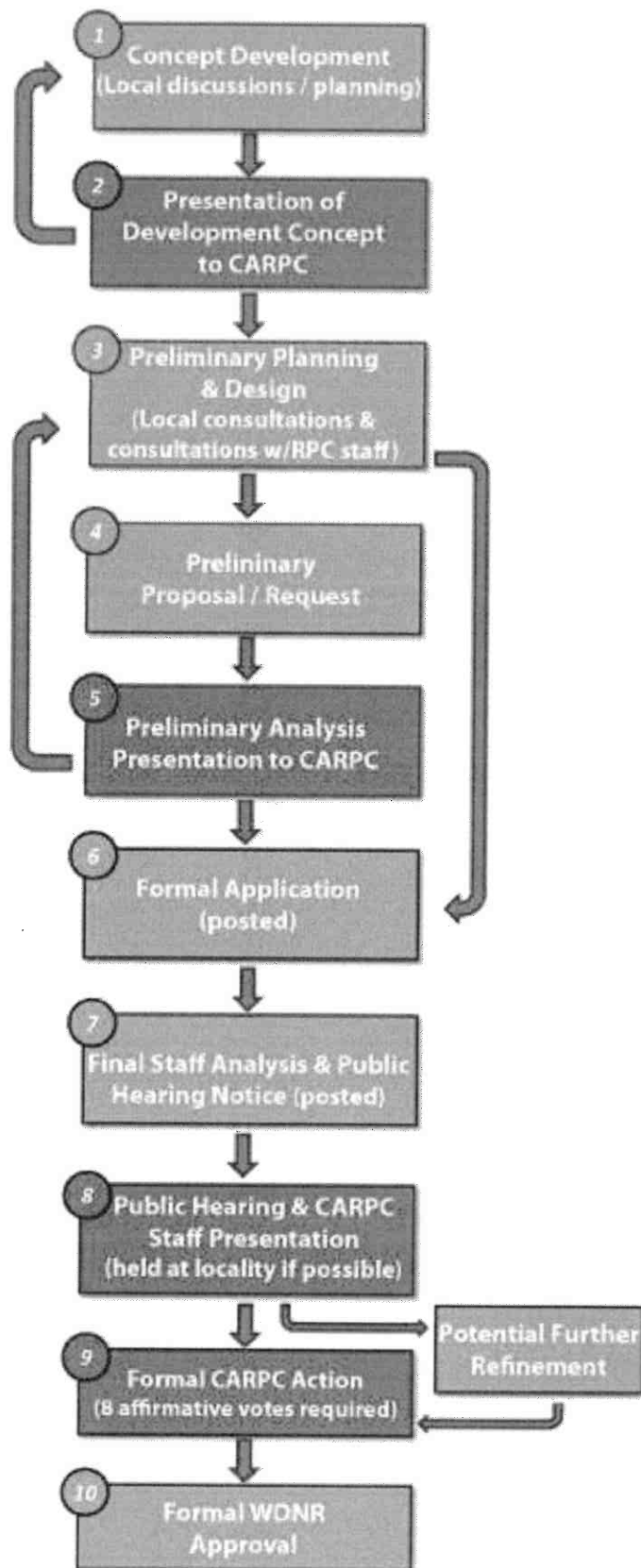
- ✓ • The 90 day review period should run from the date the applicant files with the department or with the agency that the department contracts with to review such applications a completed "formal application". We believe that an application shall be deemed a "formal application" when the applicant certifies in a letter that the request is consistent with water quality standards and the applicant has provided the information required for its application by the department (or the reviewing agency on behalf of the department).
- ✓ • The department (or the reviewing agency on behalf of the department) shall not require information that is not reasonably necessary for making a determination based on water quality standards.
- ✓ • The department (or the reviewing agency on behalf of the department) cannot refuse to accept the formal application on the basis that the application is incomplete. (Inadequate information may be a basis for rejecting the requested revision, but it may not be used to toll the time limits).
- ✓ • Prior to the department proceeding to court to request additional time, the applicant and the department may voluntarily agree to extend the time limits.

We have included a copy of CARPC's flowchart of how the application and review process works. It is the intent that the application begin at stage 6 (formal application).

6. Designated Agencies.

- ✓ • The governor may not designate Dane County or any of its subunits or the Dane County Lakes and Watershed Commission (see section 33.41, Stats.) to develop the areawide water quality management plan or review requested revisions to the areawide water quality management plan for the area consisting of Dane County under 33 USC 1288.
- ✓ • The department may not contract with either Dane County or any of its subunits or the Dane County Lakes and Watershed Commission to provide advisory services as to whether to approve or deny revisions to the areawide water quality management plan.
- ✓ • The department may contract with the regional planning commission to review the requested revisions and advise the department so long as the department does not delegate its authority to adopt or reject the proposed revision.
- ✓ • Retain the language stating that the deadline is not affected by a contract entered into with a planning commission or qualified entity under this paragraph.

Sample Process for Amendments to the Dane County Water Quality Plan





State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-22617 2
RCT:jld&sac:rs
rmr

Monday, 10/21, if possible

2013 BILL

Note

✓

Regen

- 1 AN ACT *to amend* 283.83 (1) (intro.) and 283.83 (1) (b); and *to create* 283.83 (1m)
2 of the statutes; **relating to:** areawide water quality management planning for
3 Dane County.

Analysis by the Legislative Reference Bureau

Federal law requires each state to have a continuing water quality planning process that is approved by the federal Environmental Protection Agency. The law requires the plans resulting from this process to include, among a number of other elements, areawide waste treatment management plans, which contain plans for the construction of sewage treatment plants and sewage collection systems.

The federal law required governors to initially designate any area with substantial water quality problems and to designate a local organization that includes local elected officials or their designees to conduct the areawide waste treatment management planning for each designated area. Governors may designate additional areas and planning agencies after the initial mandatory designation. Federal law requires a state to act as the waste treatment management planning agency for any area of the state not designated by the governor.

Current state law requires the Department of Natural Resources (DNR) to establish a continuing water quality management planning process that results in plans for all areas of the state. The plans must include the elements required by federal law. Under DNR's rules, ^{an} the areawide waste treatment management portion of a water quality management plan must identify sewer service areas for a 20-year planning period.

✓
Analysis
insert 4-1

for an urban area ✓

BILL

local or regional agencies
Under the rules, for ~~an~~ ^{some} area ^{or} designated by the governor under federal law, DNR reviews and approves ~~the~~ ^{these} water quality management plan developed by the designated ~~agency~~. DNR adopts ~~the~~ plan for each area of the state not designated by the governor, but the rules specify that preparation of the plan for such an area will be carried out by a local planning agency under contract with DNR, if possible.

or regional
Water quality management plans are updated every five years. The rules authorize DNR to revise as necessary areawide water quality management plans for areas not designated by the governor. *approve*

Analysis in sect B
Analysis insert A
Analysis insert C
Analysis insert E
Analysis insert F
approve
This
This bill prohibits the governor from designating a local organization to develop the areawide water quality management plan for Dane County and requires DNR to prepare the plan for Dane County. The bill requires DNR to adopt or reject a proposed revision to the areawide water quality management plan for Dane County within 90 days after it receives the request for the revision. Under the bill, if DNR does not adopt or reject a proposed revision to the areawide water quality management plan for Dane County within 90 days after it receives the request, the proposed revision is automatically ^{approved} adopted on the 120th day, unless before that day DNR petitions the circuit court for an order extending the time for DNR to act on the revision. The court may grant an extension for a period it determines to be reasonable.

The bill authorizes DNR to contract with a regional planning commission or other entity, except Dane County or any of its subunits, to provide advisory services relating to the review of proposed revisions to the areawide water quality management plan for Dane County, but specifies that DNR may not delegate its authority to adopt or reject revisions.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 283.83 (1) (intro.) of the statutes is amended to read:

283.83 (1) (intro.) The department shall establish a continuing water pollution control quality management planning process which is consistent with applicable state requirements. The continuing planning process shall result in plans for all waters of the state, which plans shall include:

SECTION 2. 283.83 (1) (b) of the statutes is amended to read:

strike
283.83 (1) (b) The incorporation of all elements of any applicable areawide ~~waste treatment~~ ^{or water quality} management plans, basin plans and statewide land use plans;

BILL

Insert 3-2

SECTION 3. 283.83 (1m) of the statutes is created to read:

283.83 (1m) (a) Beginning on the effective date of this subsection [LRB

inserts date], the governor may not designate an organization under 33 USC 1288

(a) (2) to develop an areawide water quality management plan for the area consisting

of Dane County.

(b) The department shall prepare the areawide water quality management

plan for the area consisting of Dane County.

(c) 1. The department shall ^{approve} ~~adopt~~ or reject a proposed revision to the areawidewater quality management plan ^{Insert 3-9} prepared by the department under par. (b) no laterthan the 90th day after the day on which ^{Insert 3-10-A} it receives the request to make the proposedrevision, except as provided under subd. 2. ^{Insert 3-11-A} ^{Insert 3-11-B} ^{Insert 3-10-B} ^{Insert 3-11-B}2. If the department does not ^{approve} ~~adopt~~ or reject a proposed revision to the areawide

water quality management plan by the 90th day after the day on which it receives

the request, the revision ^{approved} ~~is adopted~~ on the 120th day after the day on which thedepartment receives ^{Insert 3-15-A} the request, unless before that day ^{Insert 3-15-B} the department petitions the

circuit court for an order extending the time to act on the proposed revision. The

court may issue an order extending the time for the department to act on the

proposed revision by an amount it determines is reasonable.

(4) The department may contract with a regional planning commission or other

entity, except ^{Insert 3-20} Dane County or any of its subunits, to provide advisory services

relating to the review of proposed revisions to the areawide water quality

management plan ^{Insert 3-22} to which par. (c) 1. ^{approve} ~~applies~~, but the department may not delegateits authority to ^{approve} ~~adopt~~ or reject proposed revisions. The deadline under ^{approve} ~~par. (c) 1.~~ is

not affected by a contract entered into under this paragraph.

(END)

Note
↓

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2261/2ins
RCT.....

1 **Analysis insert-1**

no ff areawide water quality management NO ff

2 **Analysis insert-A**

no ff . The bill requires DNR to base its decision on whether the proposed revision
complies with water quality standards. The bill generally requires DNR to make its
decision NO ff

3 **Analysis insert-B**

no ff a formal application NO ff

4 **Analysis insert-C**

no ff is submitted. The bill allows DNR and an applicant to agree to extend the
90-day deadline NO ff

5 **Analysis insert-D**

no ff and the applicant do not agree to an extension and DNR NO ff

6 **Analysis insert-E**

no ff , including the ✓ Dane County Lakes and Watershed Commission NO ff

7 **Analysis insert-F**

* no ff The bill also provides that Dane County ✓ and any of its subunits, including the
Dane County Lakes and Watershed Commission, may not be designated to develop
the areawide water quality management plan for Dane County. ✓

8 **Insert 3-2**

9 no ff The department shall approve or reject proposed revisions to the NO ff

10 **Insert 3-5**

11 no ff The department shall base a decision under this paragraph ✓ on whether the
12 proposed revision complies with the water quality standards under s. 281.15. ✓ The
13 department may place conditions on its approval of a proposed revision to the plan.

14 **Insert 3-6**

15 no ff , or a person contracting with the department under par. (f), ✓ may not require
16 information concerning a proposed revision to the areawide water quality plan for
17 the area consisting of Dane County other than information that is reasonably

management



1 necessary to determine whether the proposed revision complies with water quality
2 standards under s. 281.15 ~~NO~~

3 **Insert 3-9**

4 ~~no~~ for the area consisting of Dane County ~~NO~~

5 **Insert 3-10-A**

6 ~~no~~ the department, or a person contracting with the department under par. (f), ~~NO~~

7 **Insert 3-10-B**

8 ~~no~~ formal application for ~~NO~~

9 **Insert 3-11-A**

10 ~~no~~, including a letter from the applicant certifying that the proposed revision is
11 consistent with water quality standards and information supporting the
12 certification ~~NO~~

13 **Insert 3-11-B**

14 ~~no~~ or 3. The department, or a person contracting with the department under par.
15 (f), may not refuse to accept a formal application on the basis that the information
16 in the application is inadequate.

17 **Insert 3-11-C**

18 ~~no~~ 2. The department and an applicant may agree to extend the deadline under
19 subd. 1. for the department to approve or reject the proposed revision.

20 **Insert 3-15-A**

21 ~~no~~ the formal application for the revision ~~NO~~

22 **Insert 3-15-B**

23 ~~no~~ the department and the applicant reach an agreement under subd. 2. or ~~NO~~

24

25

Insert 3-18

(d) The governor may not under ^g(s) 33 USC 1288 (a) (2) designate Dane County or any of its subunits, including the [✓]Dane County lakes and watershed commission, to develop the areawide water quality ^{management} plan for the area consisting of Dane County or to review proposed revisions to the plan.

(e) The department may not contract with Dane County or any of its subunits, including the Dane County lakes and watershed commission, to provide advisory services relating to the review of proposed revisions to the areawide water quality plan for the area consisting of Dane County. [✓]

Insert 3-20

^{no ff} as provided in [✓]par. (e) ^{NO ff}

Insert 3-22

^{no ff} for the area consisting of [✓]Dane County ^{NO ff}

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

Date

LRB-2261/2dn

RCT:.....

JKD

There are many differences in this version of the draft from the last version. Please review it carefully.

1. As requested, this redraft specifies that DNR's decision on a proposed revision to the areawide water quality management plan (AWQMP) must be based on whether the proposed revision complies with water quality standards. I want to be sure that the draft has the effect that is intended with respect to this instruction.

My impression is that the primary concern that motivates the drafting request relates to proposed changes to sewer service area boundaries. It seems that there would be other kinds of proposed revisions to the AWQMP. Those proposed revisions would be covered by the decision-making standard in this draft as well. I am not knowledgeable about the range of the potential types of proposed revisions. Perhaps, for example, there might be a proposal to change a wastewater treatment facility identified in the plan (or to add or remove one) or a proposal to change the standards related to approval of new treatment facilities.

I recommend that you ask persons with experience in this area to consider the types of revisions to the AWQMP that might be proposed, over the long term, and how this draft would affect decisions on whether to approve or reject those proposed revisions. Matters to consider include whether factors other than compliance with water quality standards are allowed to be used in making decisions under current law and, if so, whether the intent is for this proposal to disallow use of those factors. Is it intended that DNR's decision on all types of proposed revisions to the AWQMP be based solely on whether the proposed revisions comply with water quality standards? If not, the draft will need to be changed.

Concerning the affect of the draft on consideration of proposed changes to sewer service area boundaries, note that current s. NR 121.05 (1) (g) 2. indicates that delineation of a sewer service area must be determined in a way to promote cost-effective and environmentally sound waste collection and treatment. This draft does not allow consideration of cost-effectiveness or of environmental considerations other than compliance with water quality standards in evaluating proposed changes to the AWQMP. It seems, for example, that under this draft DNR could not reject any proposed addition to a sewer service area on the grounds that the area to be added is

not adjacent to the existing sewer service area. Is that consistent with the intent of the request? The rule also specifies that major areas unsuitable for the installation of waste treatment systems because of physical or environmental constraints "are to be excluded from the area." The rule goes on to identify the kinds of areas to be considered for exclusion because of the potential for adverse impacts on the quality of the waters of the state. Is it possible that a proposed change to a sewer service area would have the potential for an adverse impact on the quality of the waters of the state, but not the potential to cause a violation of a water quality standard? What if the proposed change had the potential to cause an adverse impact to groundwater? Note that the rule identifies groundwater recharge areas as one of the kinds of areas to be considered for exclusion from a sewer service area.

Please let me know if any changes should be made to the draft related to the decision-making standard for revisions to the AWQMP.

2. The instructions state that a request to revise the AWQMP becomes a "formal application" when the applicant certifies that the request is consistent with water quality standards and the applicant has provided the information required by DNR or the reviewing agency. They also state that DNR or the reviewing agency may not refuse to accept a formal application on the basis that the application is incomplete. I found it difficult to reconcile those statements. Please review the language in proposed s. 283.83 (1m) (c) 1. and let me know if it does not capture the intent of the instructions.

Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2261/2dn
RCT:jld:rs

October 17, 2013

There are many differences in this version of the draft from the last version. Please review it carefully.

1. As requested, this redraft specifies that DNR's decision on a proposed revision to the areawide water quality management plan (AWQMP) must be based on whether the proposed revision complies with water quality standards. I want to be sure that the draft has the effect that is intended with respect to this instruction.

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I recommend that you ask persons with experience in this area to consider the types of revisions to the AWQMP that might be proposed, over the long term, and how this draft would affect decisions on whether to approve or reject those proposed revisions. Matters to consider include whether factors other than compliance with water quality standards are allowed to be used in making decisions under current law and, if so, whether the intent is for this proposal to disallow use of those factors. Is it intended that DNR's decision on all types of proposed revisions to the AWQMP be based solely on whether the proposed revisions comply with water quality standards? If not, the draft will need to be changed.

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request? The rule also specifies that major areas unsuitable for the installation of waste treatment systems because of physical or environmental constraints "are to be excluded from the area." The rule goes on to identify the kinds of areas to be considered for exclusion because of the potential for adverse impacts on the quality of the waters of the state. Is it possible that a proposed change to a sewer service area would have the potential for an adverse impact on the quality of the waters of the state, but not the potential to cause a violation of a water quality standard? What if the proposed change had the potential to cause an adverse impact to groundwater? Note that the rule identifies groundwater recharge areas as one of the kinds of areas to be considered for exclusion from a sewer service area.

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Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

Tradewell, Becky

From: Florian, Mark
Sent: Thursday, November 07, 2013 3:18 PM
To: Tradewell, Becky
Subject: Revisions to Draft: LRB 2261/2 of Areawide Water Quality Mgmt
Attachments: 3rd Response to LRB Drafting Request - 2261.docx

Hello Becky,

I hope that this message finds you well. Please see the attached memo regarding a couple of small changes we'd like to see to LRB 2261. Please feel free to contact me with any questions or concerns.

Thanks and all the best,

Mark

Mark Florian
Office of Representative John Jagler
37th Assembly District
(608) 266-9650

MEMORANDUM

TO: Becky Tradewell
Managing Attorney
Legislative Reference Bureau

FROM: Office of Rep. John Jagler

DATE: November 7, 2013

RE: Revision to Draft LRB 2261/2 of Areawide Water Quality Mgmt.
Legislation
Wis. Stat. § 283
Wis. Adm. Code NR § 121

Thank you for your most recent draft of the proposal identified as LRB-2261/2. This memo is intended to provide direction on two additional modifications to the most recent draft. Accordingly, we request that LRB include the following changes:

- Strike the subsection designation .15 contained on Page 3, Line 2 to read s. 281 instead of s. 281.15.
- Strike the sentence on page 3, line 15 beginning with “The department” and ending on line 18. Instead of prohibiting the department or contractor from refusing the application, please replace with the following language:

If the department determines that the application is incomplete, the department shall notify the application in writing and may make only one request for additional information during the 90-day period specified in par. (3.).

Tradewell, Becky

From: Florian, Mark
Sent: Friday, November 08, 2013 3:04 PM
To: Tradewell, Becky
Subject: RE: Revisions to Draft: LRB 2261/2 of Areawide Water Quality Mgmt

Hello Becky,

You're right, thanks for catching that. Apologies for any confusion, let's scrap the requested change on page 3, line 2. Please let me know if there are any other issues.

Thanks and have a great weekend,

Mark

Mark Florian
Office of Representative John Jagler
37th Assembly District
(608) 266-9650

From: Tradewell, Becky
Sent: Friday, November 08, 2013 9:20 AM
To: Florian, Mark
Subject: RE: Revisions to Draft: LRB 2261/2 of Areawide Water Quality Mgmt

Mark,

About the first requested change: in drafting, we try to use the narrowest cross-reference we can in order to make cross-references as clear as possible. The only authority that I know of for DNR to set water quality standards is s. 281.15. Does someone know of another source for that authority in chapter 281? Or is there something else that the requested change on page 3, line 2 is trying to get at?

Thanks for your assistance,
Becky
6-7290

From: Florian, Mark
Sent: Thursday, November 07, 2013 3:18 PM
To: Tradewell, Becky
Subject: Revisions to Draft: LRB 2261/2 of Areawide Water Quality Mgmt

Hello Becky,

I hope that this message finds you well. Please see the attached memo regarding a couple of small changes we'd like to see to LRB 2261. Please feel free to contact me with any questions or concerns.

Thanks and all the best,



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2261/3
RCT:jld&sac:rs

Monday 11/11

Y M V

2013 BILL

X Regen

- 1 AN ACT *to amend* 283.83 (1) (intro.) and 283.83 (1) (b); and *to create* 283.83 (1m)
2 of the statutes; **relating to:** areawide water quality management planning for
3 Dane County.

Analysis by the Legislative Reference Bureau

Federal law requires each state to have a continuing water quality planning process that is approved by the federal Environmental Protection Agency. The law requires the plans resulting from this process to include, among a number of other elements, areawide waste treatment management plans, which contain plans for the construction of sewage treatment plants and sewage collection systems.

Current state law requires the Department of Natural Resources (DNR) to establish a continuing water quality management planning process that results in areawide water quality management plans for all areas of the state. The plans must include the elements required by federal law. Under DNR's rules, an areawide water quality management plan for an urban area must identify sewer service areas for a 20-year planning period.

Under the rules, for some areas, DNR reviews and approves water quality management plans developed by designated local or regional agencies. DNR adopts plans for other areas, but the rules specify that preparation of plans for those areas will be carried out by local or regional planning agencies under contract with DNR, if possible.

This bill requires DNR to approve or reject proposed revisions to the areawide water quality management plan for Dane County. The bill requires DNR to base its

BILL

decision on whether the proposed revision complies with water quality standards. The bill generally requires DNR to make its decision within 90 days after a formal application for the revision is submitted. The bill allows DNR and an applicant to agree to extend the 90-day deadline. Under the bill, if DNR and the applicant do not agree to an extension and DNR does not approve or reject a proposed revision to the areawide water quality management plan for Dane County within 90 days, the proposed revision is automatically approved on the 120th day, unless before that day DNR petitions the circuit court for an order extending the time for DNR to act on the revision. The court may grant an extension for a period it determines to be reasonable.

The bill authorizes DNR to contract with a regional planning commission or other entity, except Dane County or any of its subunits, including the Dane County Lakes and Watershed Commission, to provide advisory services relating to the review of proposed revisions to the areawide water quality management plan for Dane County, but specifies that DNR may not delegate its authority to approve or reject revisions. The bill also provides that Dane County and any of its subunits, including the Dane County Lakes and Watershed Commission, may not be designated to develop the areawide water quality management plan for Dane County.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 283.83 (1) (intro.) of the statutes is amended to read:

2 283.83 (1) (intro.) The department shall establish a continuing water pollution
3 control quality management planning process which is consistent with applicable
4 state requirements. The continuing planning process shall result in plans for all
5 waters of the state, which plans shall include:

6 **SECTION 2.** 283.83 (1) (b) of the statutes is amended to read:

7 283.83 (1) (b) The incorporation of all elements of any applicable areawide
8 waste water quality management plans, basin plans and statewide land use plans;

9 **SECTION 3.** 283.83 (1m) of the statutes is created to read:

10 283.83 (1m) (a) The department shall approve or reject proposed revisions to
11 the areawide water quality management plan for the area consisting of Dane County.

BILL

1 The department shall base a decision under this paragraph on whether the proposed
2 revision complies with the water quality standards under s. 281.15. The department
3 may place conditions on its approval of a proposed revision to the plan.

4 (b) The department, or a person contracting with the department under par.
5 (f), may not require information concerning a proposed revision to the areawide
6 water quality management plan for the area consisting of Dane County other than
7 information that is reasonably necessary to determine whether the proposed
8 revision complies with water quality standards under s. 281.15.

9 (c) 1. The department shall approve or reject a proposed revision to the
10 areawide water quality management plan for the area consisting of Dane County no
11 later than the 90th day after the day on which the department, or a person
12 contracting with the department under par. (f), receives the formal application for
13 the proposed revision, including a letter from the applicant certifying that the
14 proposed revision is consistent with water quality standards and information
15 supporting the certification, except as provided under subd. 2. or 3. ^{Insert 3-15 ✓} The department,

16 or a person contracting with the department under par. (f), may not refuse to accept
17 a formal application on the basis that the information in the application is
18 inadequate.

19 2. The department and an applicant may agree to extend the deadline under
20 subd. 1. for the department to approve or reject the proposed revision.

21 3. If the department does not approve or reject a proposed revision to the
22 areawide water quality management plan by the 90th day after the day on which ^{it}
23 ^{is received} receives the request, the revision is approved on the 120th day after the day on which
24 the department receives the formal application for the revision, unless before that
25 day the department and the applicant reach an agreement under subd. 2. or the

BILL

1 department petitions the circuit court for an order extending the time to act on the
2 proposed revision. The court may issue an order extending the time for the
3 department to act on the proposed revision by an amount it determines is reasonable.

4 (d) The governor may not under 33 USC 1288 (a) (2) designate Dane County
5 or any of its subunits, including the Dane County lakes and watershed commission,
6 to develop the areawide water quality management plan for the area consisting of
7 Dane County or to review proposed revisions to the plan.

8 (e) The department may not contract with Dane County or any of its subunits,
9 including the Dane County lakes and watershed commission, to provide advisory
10 services relating to the review of proposed revisions to the areawide water quality
11 management plan for the area consisting of Dane County.

12 (f) The department may contract with a regional planning commission or other
13 entity, except as provided in par. (e), to provide advisory services relating to the
14 review of proposed revisions to the areawide water quality management plan for the
15 area consisting of Dane County, but the department may not delegate its authority
16 to approve or reject proposed revisions. The deadline under par. (c) 1. is not affected
17 by a contract entered into under this paragraph.

18 (END)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2261/3ins
RCT:.....

1 **Insert 3-15**

2 ^{NO}
 ~~4~~ If the department determines that the application is incomplete, the
3 department shall notify the applicant in writing and may make only one request for
4 additional information during the 90-day[✓] period under this subdivision.[✓]

Basford, Sarah

From: Rep.Jagler
Sent: Tuesday, February 18, 2014 1:25 PM
To: LRB.Legal
Subject: Draft Review: LRB -2261/3 Topic: Areawide water quality plans and revisions to those plans

Please Jacket LRB -2261/3 for the ASSEMBLY. Thank you!